IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4218 of 1997

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RK TRADING COMPANY

Versus

COLLECTOR

Appearance:

MR PK JANI for Petitioner No. 1

KL PANDYA, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/04/2004

ORAL JUDGEMENT

1. The petitioner is carrying on the business of selling wheat and pulses at the Market Yard, Dahod. On 11th November 1995 the Inspecting Authority visited the premises of the petitioner and allegedly found certain technical irregularities due to which by seizure order dated 11.11.1995 wheat worth Rs.1,69,890/- and pulses

(Mug) worth Rs.66240/- were ordered to be seized. Ultimately the said goods were released on bank guarantee.

2. In pursuance of the seizure order, a notice was issued to the petitioner by the Collector on 4th January 1996 and the petitioner has replied to the said notice vide his reply dated 12th January 1996. Thereafter the Collector, Panchmahals, by his order dated 30th January 1996 ordered confiscation of 20% of the goods seized.

3. Against the order of Collector, Panchmahals, dated 4.1.1996, the petitioner preferred an appeal before the State Government, which came to be partly allowed by order dated 5.4.1997. However, the State Government has increased the penalty of 20% to 25% of the goods seized. But, in view of the Government Notification deleting "wheat" from the Schedule I to the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981, the wheat was ordered to be released. Under the circumstances the petitioner has approached this Court by way of the present petition.

4. Heard the learned counsel for the respective parties. Mr. Jal Unwala has contended that the breach committed by the petitioner is of a technical nature and in view of the decision of the apex court in the case of Patel Ambaram Kuberbhai Vs. State of Gujarat, reported in 1998(2) GLH 533, the confiscation order is required to be quashed and set aside. Since the petitioner has stored the goods at a place which was not mentioned in the licence, the petitioner has accepted the mistake and considering this lapse, penalty of 20% is imposed. I, therefore, do not find any merits in this submission inasmuch as the order passed by the Collector at 20% is just and proper.

5. Mr. Jal for the petitioner has submitted that the revisional authority has committed an error in increasing the penalty in revision application preferred by the petitioner from 20% as imposed by the Collector to 25%. Such increase of 5% is without affording an opportunity of being heard to the petitioner. Prima facie this submission of Mr. Unwala is acceptable inasmuch as there was no reason for the revisional authority to increase 5% penalty.

6. In the result, the petition partly succeeds. The order of the revisional authority dated 5.4.1997 is accordingly modified to the effect the the penalty imposed by the revisional authority is reduced from 25%

to 20% as imposed by the Collector, Panchmahals. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. KHAVERI, J.]
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